

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MEL JASON JORDAN,

Defendant-Appellant.

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UNPUBLISHED

September 11, 2003

No. 240974

Muskegon Circuit Court

LC No. 01-046581-FH

Before: Cooper, P.J., and Fitzgerald and Kelly, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of third-degree criminal sexual conduct involving a fifteen-year-old girl, MCL 750.520d(1)(a), and was sentenced to a prison term of 7-1/2 to fifteen years. Defendant appeals as of right. We affirm.

Defendant argues that the trial court violated MRE 404(b) when it admitted evidence that defendant provided alcohol to four underage girls, including the complainant, on the night of the incident. We review a trial court's evidentiary rulings for an abuse of discretion. *People v Sabin (After Remand)*, 463 Mich 43, 60; 614 NW2d 888 (2000).

Bad acts evidence is inadmissible to prove character in conformity therewith or criminal propensity. MRE 404(b); *People v Vandervliet*, 444 Mich 52, 64; 508 NW2d 114 (1993). However, under the "res gestae" exception to MRE 404(b), evidence of prior bad acts is admissible where those acts are so blended or connected with the charged offense that proof of one incidentally involves the other or explains the circumstances of the crime. *People v Robinson*, 128 Mich App 338, 340; 340 NW2d 303 (1983), citing *People v Delgado*, 404 Mich 76, 83; 273 NW2d 395 (1978). In *Delgado*, supra at 83, the Court commented:

It is the nature of things that an event often does not occur singly and independently, isolated from all others, but, instead, is connected with some antecedent event from which the fact or event in question follows as an effect from a cause. When such is the case and the antecedent event incidentally involves the commission of another crime, the principle that the jury is entitled to hear the "complete story" ordinarily supports the admission of such evidence.

Here, evidence that defendant supplied the complainant and the other minor females with alcohol shortly before the sexual assault was relevant in that it gave the jury an intelligible

presentation of the full context in which the events took place. The evidence was properly admissible as part of the *res gestae* of the crime without regard to MRE 404(b). *Delgado, supra*.

Defendant next argues that plain error requiring reversal occurred when a witness testified that when the victim told her about the sexual assault she could see in the victim's eyes that she was telling the truth. Defendant failed to object to the witness' testimony below. We review claims of unpreserved, nonconstitutional error for plain error. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130. "To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Id.*, citing *United States v Olano*, 507 US 725, 731-734; 113 S Ct 1770; 123 L Ed 2d 508 (1993). "The third requirement generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings." *Id.*

On direct examination, the prosecutor asked the witness about her feelings toward defendant after learning of the assault. The prosecutor did not seek to elicit the witness' opinion about the victim's character for truthfulness. In an unresponsive answer, the witness replied, "At first I didn't believe her. And then she went on to say, and I could see in her face that it was true. And I began believing her." Admission of a voluntary and unresponsive answer by a witness is ordinarily not an error requiring reversal. *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995). Here, the reference was fleeting, and was not emphasized to the jury by the prosecutor. Rather, it was defense counsel who reiterated the testimony during closing argument. Defendant has failed to meet the requirements necessary to avoid forfeiture under the plain error rule.

Defendant also argues that the trial court improperly ordered the sentence for the present conviction to run consecutively with the sentences imposed for convictions on felony charges that were pending at the time of the instant offense. We disagree. The consecutive sentencing statute<sup>1</sup> is "typically applicable where a criminal defendant has been apprehended and is then released on bond, or otherwise at large, and subsequently commits another felony." *People v Henry*, 107 Mich App 632, 635; 309 NW2d 922 (1981). Because defendant was out on bond when he committed the present offense, the trial court had the discretion to order consecutive sentencing. We find no abuse of that discretion. The record reveals that the trial court carefully considered whether consecutive sentencing was appropriate in this case before imposing a consecutive sentence.

Affirmed.

/s/ Jessica R. Cooper  
/s/ E. Thomas Fitzgerald  
/s/ Kirsten Frank Kelly

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<sup>1</sup> MCL 768.7b.